

## Wireless Telecommunications Regulations

### **Background**

The City's wireless telecommunications regulations (Section 25 of the Belmont Zoning Ordinance) were established in 1987. As discussed below, modifications have been made to the City's regulations in response to changes in state and federal laws.

### **1996-2018**

The City's authority to regulate wireless telecommunication facilities diminished over time, as various state and federal regulations have been adopted, including:

- *Telecommunications Act of 1996 (47 USC §332)*

The Telecommunications Act, codified as 47 United States Code Section (USCS) 332, limits the City from either conditioning or denying projects based on concerns stemming from the environmental effects of radio frequency emissions ("RF"), if the proposed facility complies with federal RF standards. The Act also prohibits the city from denying projects if the applicant has shown that both: 1) The facility is necessary to fill a significant gap in the Applicant's wireless network; and 2) The facility is the least intrusive means of filling the service gap.

- *Middle Class Tax Relief and Jobs Creation Act of 2012 (47 USC § 6409)*

The Middle-Class Tax Relief and Jobs Creation Act of 2012, codified as 47 USCS 6409, provides that the city must approve a request to modify an eligible wireless facility if the proposed modification does not result in a substantial change to the physical dimensions of an existing tower or base station (i.e. a wireless facility). Under the Act, an eligible facilities request means any request for modification of an existing wireless facility that involves collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.

- *47 CFR § 1.40001 Wireless Facility Modifications – 2015*

The Federal Communications Commission (FCC) adopted new regulations, that broadly interpreted Section 6409 of the Act in favor of advancing wireless facility deployment. The new FCC rules define and expand on the terms used in the Act for what constitutes a "substantial change" to an existing facility.

- *State Preemption - Public Utility Code Section 7901*

Under California Public Utility Code (PUC) Section 7901, telephone companies have a right to construct telephone equipment in the public rights of way in such a manner as to "not incommode the public use" of the right of way. The courts have determined that wireless communication carriers are "telephone companies" for purposes of Section 7901. Cities have the right under PUC Section 7901.1 "to exercise reasonable control as to the time, place and manner" in which the right of way is accessed. This right of control includes the regulation of the placement and appearance of telecommunication facilities installed in the public right of way.

## Wireless Telecommunications Regulations

- *Federal Communications Commission (FCC) Declaratory Ruling – 2018*

The Federal Communications Commission (FCC) adopted a Declaratory Ruling and Third Report Order in 2018, which sets forth limitations on state and local government regulation of small wireless facilities that are placed on existing or new utility poles and streetlight standards located in the public right-of-way, and private property. The FCC ruling: a) limits the level of local permitting and discretion; b) establishes “shot clock” rules (e.g., time limits and deadlines) for processing and action on local permits; c) limits the fees that can be charged for the facilities; and d) requires that any aesthetic regulations and fees required for processing of small wireless facilities be published in advance.

### **2018-2019**

The City Council established a priority project to include monitoring wireless regulations (FY18-19), and modifying the City’s Wireless Telecommunications Ordinance (FY19-20) to ensure compliance with state and federal law. To this end, City staff took the following actions:

#### Monitoring & Application Changes

Staff modified the application process in response to the FCC regulation changes in 2012 and 2015. Application materials were modified, and a consultant was engaged to peer review radio frequency (RF) reports to assist staff in meeting the new Section 6409 “shot clock” deadlines; however, these type of applications have continued to be reviewed by the Planning Commission in accordance with the current City Telecommunications Ordinance (Section 25 of the Belmont Zoning Ordinance), and it would be very difficult to meet shot clock deadlines if multiple applications were submitted at the same time.

#### Public Works Policy

Planning and Public Works staff collaborated in the creation of a Public Works Policy for small cell wireless facilities in the public right-of-way. As the City’s review of these types of installations is limited to time, place and manner, the policy was developed with: 1) preferred and non-preferred locations and placement requirements; 2) design and performance standards; 3) application process and noticing requirements; and 4) post installation review and testing requirements.

#### Administrative Draft Ordinance

Staff engaged the services of a consultant to assist in the preparation of an updated Telecommunications Ordinance. An administrative draft telecommunications ordinance was prepared by staff and the consultant.

### **2019-2020**

#### Outreach to Carriers

The technology for wireless telecommunication facilities is constantly evolving. Thus, staff conducted a preliminary outreach meeting with wireless facilities carriers, prior to drafting the City’s update to wireless facilities regulations. The intent of the outreach meeting was to: 1) obtain a better understanding of current and future wireless facility technologies (i.e., technical and design feasibility); and 2) determine how these technologies could be regulated within the City’s wireless telecommunication rule structure, consistent with state and federal law (i.e., draft

## **Wireless Telecommunications Regulations**

regulations that do not result in an effective prohibition of wireless facilities). The carriers in attendance at the meeting provided verbal and written comments that were reviewed by the City's outside legal consultant, and considered by staff, prior drafting the draft update to wireless telecommunications.

### **Legal Consultation**

Staff continued to consult with outside legal counsel and revise the draft wireless regulations as modifications to state or federal law occurred, via subsequent legislation or case law (i.e., the FCC Order in June 2020, and the Ninth District Court Ruling). Draft regulations were prepared by staff and reviewed by outside legal counsel, considering the most current state and federal laws.

### **Study Session / Community Meeting**

No additional changes were recommended by the consulting attorney, and a Study Session / Community Meeting was scheduled to begin public review of the draft regulations. A notice was provided within a utility bill to all Belmont households, and notice was posted at several locations within the City. Notice was also provided on social media, and the City of Belmont Website.

### **Next Steps**

After the Study Session / Community Meeting, staff anticipates that the steps identified below would need to be taken for the update of the City's wireless telecommunications facilities regulations. The exact timing for the project will depend on a number of factors, including the number of comments received, and if any subsequent analysis or edits are needed to the draft regulations.

- Study Session & Community Outreach Meeting - (December 15, 2020)
- Planning Commission Public Hearing – (January 2021)
- City Council Meeting for Ordinance Introduction – (February 2021)
- City Council Public Hearing for Ordinance adoption – (February or March 2021)